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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/722,886	11/26/2003	Thomas M. Laney	86688CPK	1675

7590 07/28/2006

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Rochester, NY 14650-2201

EXAMINER

SCHWARTZ, PAMELA R

ART UNIT	PAPER NUMBER
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1774

DATE MAILED: 07/28/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/722,886

Applicant(s)

LANEY ET AL.

Examiner

Pamela R. Schwartz

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on May 1 and 11, 2006.
2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-38 is/are pending in the application.
4a) Of the above claim(s) 16-20 and 22-38 is/are withdrawn from consideration.
5) ☐ Claim(s) _____ is/are allowed.
6) ☒ Claim(s) 1-15 and 21 is/are rejected.
7) ☐ Claim(s) _____ is/are objected to.
8) ☒ Claim(s) 1-38 are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

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1. Claims 1-15 and 21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Morita et al. (EP 510,988) for reasons of record and for reasons given below. The examiner has carefully considered the method of making the material of the reference (see for example, page 2, lines 35-40) and applicants' disclosed method of formation (see for example, page 13, lines 23-30). The basic methods of formation cannot be distinguished from one another. On this basis, the claim limitations that have been added to claim 1, while not specifically disclosed by the reference, are considered to be inherent therein when the range of stretching is as set forth by the reference at page 5, lines 27-30. Since the examiner is unable to experiment to determine if the prior art meets the functional language of claim 1, the burden is shifted to applicants to demonstrate that the medium of the prior art will not meet this claim limitation.
2. It is noted that claim 2 appears to be a substantial duplicate of claim 1 and should be canceled or amended.
3. Applicant's arguments filed May 1 and 11, 2006 have been fully considered but they are not persuasive. Applicants' terminal disclaimer has been accepted. Applicants argue that it is the combination of high loadings of voiding agents and a high degree of biaxially stretching that leads to the instantly claimed microvoided layer. However, the ranges for loadings of voiding agents and for degree of stretching in one or both directions disclosed by the reference at page 5, lines 10-14 and lines 27-30 of the reference. In fact, at page 5 as cited, the reference states that with loadings less than 40 parts there is "insufficient porosity and low percentage of open cells" so that the reference specifically states that the film contains open cells. Morita et al. clearly

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appears to be directed at an open cell structure and the examiner is unable to distinguish applicants' film from that of the prior art. While Morita et al. disclose a different use for their film, this distinction does not structurally distinguish the prior art article from applicants' medium. With respect to the declaration, the declaration merely repeats the need for a certain stretching ratio in order to obtain a film with desired characteristics. The needed ratio is right in the middle of the range taught by the reference on page 5. Therefore, the declaration is not persuasive.

4. **THIS ACTION IS MADE FINAL.** See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

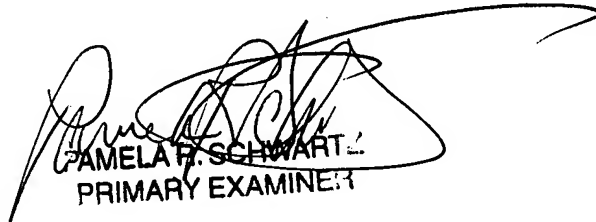
5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Pamela Schwartz whose telephone number is (571) 272-1528.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rena Dye, can be reached on (571) 272-3186. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

PRSchwartz
July 21, 2006



PAMELA F. SCHWARTZ
PRIMARY EXAMINER